

201301017



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OCT 12 2012

Uniform Issue List: 408.03-00

T:EP:RA:TI

Legend:

Taxpayer A	=
IRA B	=
Financial Institution C	=
Account D	=
Financial Institution E	=
Amount 1	=
Amount 2	=

Dear :

This letter is in response to a request for a letter ruling dated November 25, 2011, as supplemented by additional correspondence dated June 21, and 27, 2012, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"), regarding the distributions of Amount 1 and Amount 2 from IRA B.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that she received distributions of Amount 1 and Amount 2 from IRA B. Taxpayer A asserts that her failure to accomplish a rollover of Amounts 1 and 2 within the 60-day periods prescribed by Code section 408(d)(3) was due to her medical condition which impaired her ability to manage her financial affairs. Taxpayer A further asserts that Amounts 1 and 2 have not been used for any purpose except taking minimum required distributions.

Taxpayer A maintained IRA B, an individual retirement account under section 408(a) of the Code, with Financial Institution C. The assets in IRA B were mainly invested in Certificates of Deposit (CD). Seeking a higher rate of return in IRA B, Taxpayer A decided to liquidate the CD investments. She withdrew Amount 1 from IRA B on May 2, 2011, and Amount 2 from IRA B on May 9, 2011, with the intention of depositing these into Account D, a money market fund with Financial Institution E. While Taxpayer A intended that Amounts 1 and 2 remain within an IRA, Account D was a non-IRA account with Financial Institution E. The error was not discovered until November 1, 2011.

Taxpayer A submitted documentation that indicates that a year prior to the withdrawal of Amounts 1 and 2 from IRA B, Taxpayer A had major surgery for cancer. Several months following the surgery, Taxpayer A had several additional procedures to treat her cancer, including radiation therapy from August through November of 2010. The treatment of her cancer is ongoing. She takes prescribed medication and undergoes X-ray exams regularly. The ruling request is supported by a letter from her physician's office that explains Taxpayer A's medical condition. Taxpayer A represents that the stress of surgery and having to face follow-up procedures and take medications impacted Taxpayer A's ability to manage her financial affairs. As a result, Taxpayer A asserts she was unable to do all that was necessary to complete the rollover of Amounts 1 and 2 timely into an IRA account after placing them in the non-IRA account.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received

by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 402(c)(3)(B) and 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

With respect to Amount 1, the Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period because of one of the factors enumerated in Revenue Procedure 2003-16, for example errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. In this instance, Taxpayer A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected her ability to timely roll over the distribution of Amount 1. Taxpayer A has represented that her medical condition caused her to be weakened and confused for a prolonged period of time which adversely impacted her ability to manage her financial affairs. However, she has not provided any evidence that there was any change in her condition during the 60-day period following the distribution of Amount 1 that explains her failure to complete the rollover. In fact, a full year elapsed between Taxpayer A's surgery and her attempt to complete the rollover of Amount 1. The facts indicate that Taxpayer A for the most part resumed normal function. She was capable of making herself aware of the rules and time frame for completing a rollover of Amount 1. The information presented indicates that the

inability of Taxpayer A to roll over Amount 1 into an IRA within the 60-day period was, at all times, within the reasonable control of Taxpayer A.

With respect to Amount 2, under section 408(d)(3)(B), Amount 2 is not available for rollover because, under the one rollover per year rule, only one tax free distribution is permitted per year.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1 from IRA B.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. If you wish to inquire about this ruling, please contact (I.D. # ), , at ( ).

Sincerely yours,

*Carlton A. Wathens*

Manager  
Employee Plans Technical Group 1